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Proposed Attorneys for Joel B. Weinberg, Receiver

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LASALLE BANK NATIONAL
ASSOCIATION,

Plaintiff,

v.

COMAIR ROTRON, INC.; THERMAFLO,
INC.; AND COMAIR PARENT CORP.,

Defendants.

CASE NO. 08-cv-1387 DMS (POR)

Assigned to Hon. Dana M. Sabraw

**RECEIVER'S EX PARTE MOTION FOR
ORDER AUTHORIZING EMPLOYMENT
OF JEFFER, MANGELS, BUTLER &
MARMARO LLP AS RECEIVER'S
GENERAL COUNSEL; MEMORANDUM
OF POINTS AND AUTHORITIES;
DECLARATIONS OF JOEL B. WEINBERG
AND STEVEN M. SPECTOR IN SUPPORT
THEREOF**

[No Hearing Required]

TO THE HONORABLE DANA M. SABRAW, UNITED STATES DISTRICT JUDGE:

Joel B. Weinberg, as Receiver herein ("Receiver"), hereby moves this Court for an Order Authorizing Employment of Jeffer, Mangels, Butler & Marmaro LLP as Receiver's General Counsel (the "Motion"). In connection therewith, Receiver respectfully represents and alleges as follows:

1. On July 31, 2008, plaintiff LaSalle Bank National Association ("Bank") filed herein its Complaint for Breach of Contract and Appointment of Receiver ("Complaint"). Pursuant to the Complaint, Bank alleged that the defendant companies were indebted to it in excess of \$20

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1 million and that the Bank had a "blanket" security interest in all of the personal property assets of
 2 the defendant companies. The Bank further alleged that the appointment of a receiver was
 3 necessary to protect the interests of the Bank in its collateral.

4 2. Consistent with the Stipulated Order Appointing A Receiver, signed by the
 5 Court on July 31, 2008, Receiver has filed his acceptance and oath thereby qualifying him to act as
 6 Receiver herein.

7 3. Receiver requires legal counsel to act as his attorneys in connection with his
 8 duties as Receiver herein and the administration of the assets and property of the Receivership
 9 estate.

10 4. Specifically, Receiver requires the aid of legal counsel for the following
 11 purposes:

12 (a) To advise, consult, prosecute for and defend Receiver concerning
 13 questions arising in the administration and conduct of the Receivership estate, Receiver's rights and
 14 remedies with regard to the estate's assets and the claims of creditors;

15 (b) To appear for and represent Receiver's interest in obtaining court
 16 approval or instructions respecting the Receivership estate, and to assist and advise the Receiver
 17 regarding the liquidation of the various assets and investigation of the value and of the viability of
 18 collecting various accounts receivable of the estate;

19 (c) To assist in the preparation of such pleadings, applications and orders
 20 as are required for the orderly administration of this Receivership estate; and

21 (d) To meet and/or negotiate with competing claimants, lien holders and
 22 others claiming money from the Receivership estate.

23 5. Receiver has selected the law firm of Jeffer, Mangels, Butler & Marmaro
 24 LLP ("JMBM") to represent him as his general counsel. JMBM is a law firm with offices at 1900

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1 Avenue of the Stars, Seventh Floor, Los Angeles, California 90067. JMBM is not the attorney for
2 or associated or employed by any party or attorney involved in this matter.¹

3 6. JMBM is a full service law firm comprised of about 170 lawyers with offices
4 in Los Angeles, San Francisco and Orange County. One of the practice groups at JMBM is a group
5 specializing in the representation of bankruptcy trustees and receivers. Steven M. Spector, a
6 member of JMBM's insolvency group, has been a practicing attorney for more than 35 years and has
7 practiced before all state and federal courts in California. Mr. Spector's practice has been primarily
8 involved in bankruptcy, insolvency and receivership matters. Receiver believes that JMBM, and
9 Mr. Spector, are well qualified to represent him in connection with this matter.

10 7. JMBM has agreed to represent Receiver on an hourly basis at its normal
11 hourly rates for services rendered as the same may adjust from time to time. JMBM's hourly rate
12 typically adjust on January 1 of each year. JMBM's current hourly rates range from \$95.00 per hour
13 to \$795.00 per hour. In addition, JMBM will bill Receiver for costs advanced or incurred. Receiver
14 has requested that JMBM render its billings to Receiver on a monthly basis. Receiver proposes and
15 requests authorization hereby to pay such billings on a monthly basis, subject in all cases to
16 confirmation by this Court upon submittal to this Court of fee applications from time to time by
17 JMBM. JMBM has agreed that this Court's orders in connection with its fee applications will bind
18 JMBM with respect to its compensation and reimbursement of costs herein. In this manner,
19 Receiver believes that this Court will have and maintain full and complete authority and discretion
20 over legal fees incurred by Receiver and the Receivership estate and the payment thereof.

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23 ¹ As a large law firm, it is possible that JMBM may have represented creditors or
24 customers of the defendant companies in matters unrelated to this matter. In addition, JMBM has
25 represented and currently represents Lion Industrial Trust ("Lion"), the landlord of the San Diego
26 premises occupied by one of the defendant companies. The Receiver has agreed with Lion and
27 Lion has agreed with the Receiver to waive any conflict of interest between the Receiver and Lion
28 with respect to JMBM's representation. The Receiver has also agreed that JMBM will not act as his
counsel respecting matters involving Lion. The Receiver does not believe he will need counsel
respecting matters involving Lion. Should he require counsel, he will engage special counsel to
represent him with the approval of this Court. The Receiver is unaware of any disputes between
Lion and the defendant company that occupies the premises of which it is owner.

1 WHEREFORE, Receiver respectfully prays that this Court make its order
2 authorizing Receiver to employ JMBM as Receiver's general counsel herein and for such other and
3 further relief as requested herein and as is just and proper.

4 DATED: August 28, 2008

JEFFER MANGELS BUTLER & MARMARO LLP

6 

7 By: _____

8 STEVEN M. SPECTOR

9 Proposed Attorneys for Joel B. Weinberg, Receiver

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MEMORANDUM OF POINTS AND AUTHORITIES

Joel B. Weinberg, the Receiver herein ("Receiver"), submits the following points and authorities in support of Receiver's Motion for Order Authorizing the Employment of Jeffer, Mangels, Butler & Marmaro LLP ("JMBM") as Receiver's General Counsel (the "Motion").

This Court heretofore has made its Stipulated Order Appointing A Receiver (the "Order"). Consistent therewith, this Court has authorized and ordered Receiver to take charge of the property and assets of the defendant companies which is the collateral of LaSalle Bank National Association ("Bank"), the plaintiff herein. The Order has enumerated numerous rights, powers and duties which this Court has granted to the Receiver in connection with this proceeding. Based thereon, Receiver has determined that he needs the assistance of general receivership counsel. The Order, in paragraph 8 thereof, has authorized the Receiver to employ counsel. Receiver has selected JMBM to represent him as general counsel in this receivership matter. Receiver has filed the Motion seeking this Court's authorization to engage JMBM as his attorney. Further, Receiver has set forth in the Motion the necessity of employment of JMBM and the fact that JMBM is not the attorney for, associated with nor employed by any party or an attorney for any party in this matter.

Receiver believes that JMBM is well qualified to act as his attorney based upon the nature of JMBM and the experience of the lawyers at JMBM that Receiver proposes to render services for him in connection with this matter. In addition, the financial arrangement between Receiver and JMBM has been set forth and the Motion provides that this Court has the ultimate authority and control over the amount and payment of attorney's fees and reimbursement of costs with respect to JMBM. Based on all of the foregoing, Receiver respectfully requests that this Court make its order authorizing Receiver to engage JMBM as his general counsel as set forth in the Motion.


Local Rule 66.1 of this Court provides, in subdivision b. thereof, that the "receiver shall not employ an attorney . . . without an order of a judge." The same rule provides the "compensation of all such [attorneys] shall be fixed by the court." The Motion complies with the provisions of Rule 66.1.

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1 Notice of the Ex Parte Motion was given by sending an email copy of the same to
2 counsel for plaintiff and counsel for the defendant companies. Each side has indicated it has no
3 objection to the granting of the Motion. The Motion is presented on an ex parte basis because of the
4 need for Receiver to obtain legal advice and services as quickly as possible.

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6 DATED: August 28, 2008

JEFFER MANGELS BUTLER & MARMARO LLP

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9 By: _____
10 STEVEN M. SPECTOR
11 Proposed Attorneys for Joel B. Weinberg, Receiver

JMBM
Jeffer Mangels
Butler & Marmaro LLP

DECLARATION OF JOEL B. WEINBERG

I, Joel B. Weinberg, hereby declare:

1. Consistent with this Court's Stipulated Order Appointing A Receiver, I am the duly appointed Receiver herein. I have filed my oath of office and acceptance herein thereby qualifying to act as such a Receiver.

2. I require the assistance of legal counsel to act as my attorneys in connection with my duties as Receiver herein and the administration of the assets and property of the Receivership estate.

3. Specifically, I require the aid of legal counsel for the following purposes:

(a) to advise, consult, prosecute for and defend me concerning questions arising in the administration and conduct of the Receivership estate, my rights and remedies with regard to the estate's assets and the claims of creditors;

(b) to appear for and represent my interests in obtaining Court approval or instructions respecting the Receivership estate and to assist and advise me regarding the liquidation of the various assets and investigation of the value and of the liability of collecting various accounts receivable of the estate;

(c) to assist in the preparation of such pleadings, applications and orders as are required for the orderly administration of the Receivership estate; and

(d) to meet and/or negotiate with competing claimants, lienholders and others claiming money from the Receivership estate.

4. I have selected the law firm of Jeffer, Mangels, Butler & Marmaro LLP ("JMBM") to represent me as general counsel. JMBM is a law firm with offices at 1900 Avenue of the Stars, Seventh Floor, Los Angeles, CA 90067. JMBM has represented to me that they are not the attorney for or associated with or employed by any party or attorney involved in this matter.

5. JMBM is a full service law firm comprised of about 170 lawyers with offices in Los Angeles, San Francisco and Orange County. One of its practice groups is a group specializing in the representation of bankruptcy trustees and receivers. Steven M. Spector, a

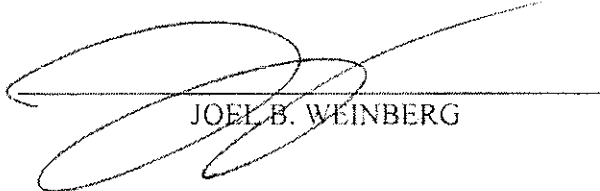
Jeffer Mangels
Butler & Marmaro LLP
JMBM

1 member of JMBM's insolvency group, has been a practicing lawyer for more than 35 years in the
 2 State of California and has practiced before all state and federal courts in California. Mr. Spector's
 3 practice has been primarily involved in bankruptcy, insolvency and receivership matters. Mr.
 4 Spector has represented me previously in connection with such matters. I believe that JMBM, and
 5 Mr. Spector, are well qualified to represent me in connection with this matter.

6 6. JMBM has agreed to represent me on an hourly basis at its normal hourly
 7 rates as the same may adjust from time to time. JMBM's present hourly rates range from \$95 per
 8 hour to \$795 per hour. In addition, JMBM will bill me for costs advanced or incurred. I have
 9 requested that JMBM render its billings to me on a monthly basis. I propose to pay such billings on
 10 a monthly basis subject, in all cases, to confirmation by this Court upon submittal to this Court of
 11 fee applications from time to time from JMBM. JMBM has agreed to do so. JMBM has agreed that
 12 this Court's order in connection with its fee applications will bind JMBM with respect to its
 13 compensation and reimbursement of costs. In this manner, I believe that this Court will have and
 14 maintain full and complete authority and discretion over legal fees incurred by me and the
 15 Receivership estate and the payment thereof.

16 I declare under penalty of perjury of the laws of the United States of America that
 17 the foregoing is true and correct.

18 Executed at Encino, California on August 28, 2008.

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 JOEL B. WEINBERG

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 Butler & Marmarou

DECLARATION OF STEVEN M. SPECTOR

I, Steven M. Spector, hereby declare:

1. I am an attorney licensed to practice law in the State of California and this Court and my professional corporation is employed by Jeffer, Mangels, Butler & Marmaro LLP, proposed counsel for Joel B. Weinberg, Receiver. All facts stated herein are known by me to be true through my own personal knowledge and I would and could competently testify thereto in a court of law if called upon to do so.

2. On August 28, 2008, I sent a complete copy of the within Motion by email to Michael Molinaro, counsel for the plaintiff herein. On August 28, 2008, I sent a complete copy of the within Motion to James Hill, counsel for the defendants herein.

3. Both Mr. Molinaro and Mr. Hill responded to my email stating that each had no objection to the relief sought by the Motion.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed at Los Angeles, California on August 28, 2008.



STEVEN M. SPECTOR

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Butler & Marmaro LLP

PROOF OF SERVICE**STATE OF CALIFORNIA, CITY AND COUNTY OF LOS ANGELES**

I am employed in the City and County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 1900 Avenue of the Stars, 7th Floor, Los Angeles, California 90067.

On August 28, 2008 I served the document(s) described as **RECEIVER'S EX PARTE MOTION FOR ORDER AUTHORIZING EMPLOYMENT OF JEFFER, MANGELS, BUTLER & MARMARO LLP AS RECEIVER'S GENERAL COUNSEL; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF JOEL B. WEINBERG AND STEVEN M. SPECTOR IN SUPPORT THEREOF** in this action by placing the true copies thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED LIST

- ☒ (BY MAIL) I am "readily familiar" with the firm's practice for collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ (BY FAX) At _____, I transmitted, pursuant to Rule 2.306, the above-described document by facsimile machine (which complied with Rule 2003(3)), to the above-listed fax number(s). The transmission originated from facsimile phone number (310) 203-0567 and was reported as complete and without error. The facsimile machine properly issued a transmission report, a copy of which is attached hereto.
- ☒ (BY E-MAIL SERVICE) I caused to be served via email the above-captioned document on all parties.
- ☐ (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.
- ☐ (BY OVERNIGHT DELIVERY) I caused said envelope(s) to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee(s).

Executed on August 28, 2008 at Los Angeles, California.

- ☐ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- ☒ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


CLAUDEAN BRANDON

JMBM
Jeffery Mangels
Butler & Marmaro LLP

SERVICE LIST

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